



## Debate on the Crown Court backlog – Thursday 20<sup>th</sup> March 2025

### Briefing for Peers

#### About Us

The Bar Council represents approximately 18,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

#### Key facts and figures

- September 2024: 73,105 criminal cases open<sup>1</sup>.
  - This represents the highest number of open cases yet recorded
  - This is a 10% increase on the previous year (66,426), and nearly a doubling since the end of 2019 (38,016)<sup>2</sup>.
- Of the 73,105 criminal cases open as of September 2024, 16,505 (23%) had been open for a year or more<sup>3</sup>
  - This compares to the 16,645 of the previous year (-1%)
- Types of open cases that increased the most in the year to September 2024<sup>4</sup>
  - Violence against the person +21%
  - Sexual offences +18%
  - Public order offences +14%
- Public funding for justice in England and Wales has declined by 22.4% in real per person terms from 2009/10 to 2022/23.<sup>5</sup>

#### Background and considerations

A backlog has always existed in the Crown Court system and is by no means a recent development. The issue is not the backlog figure itself but the 'deficit' in the system's ability to deal with it. A 'normal' level of cases waiting to be tried (somewhere around the figures experienced pre-pandemic) is inevitable and indeed expected in ordinary times to allow proper preparation of cases.

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<sup>1</sup> Ministry of Justice, '[Criminal court statistics quarterly: July to September 2024](#)', 12 December 2024.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Bar Council '[Justice Short Changed](#)', September 2024

Even prior to the disruptions of covid (restriction on jury trials), the backlog in March 2020 stood at 40,862<sup>6</sup>. This could be attributed to a range of factors, including reduced court sitting days, meaning court rooms were left sitting empty, with part time judges (Recorders) not being utilised to hear cases, and lack of available criminal barristers<sup>7</sup>. As a result, this has had a significant impact, causing delays to the number of cases awaiting trial, and ultimately, affected trust and confidence in the criminal justice system.

We welcome the government's recent decision to raise the sitting day cap to 110,000 in the next financial year<sup>8</sup>. However, to ensure justice can be delivered in a timely and appropriate manner, there must be adequate funding to ensure that these new available sitting days can be properly utilised.

The number of Crown Court receipts (cases coming in) have routinely exceeded disposals (cases being concluded by means of verdicts, etc.). In Q3 of 2024, there were 31,683 cases received into the Crown Court, representing a 4% increase on Q2 2024, and a 12% increase on the previous year<sup>9</sup>. We attribute this in part to the increase in police officer numbers, which we believe was made without consideration of the likelihood of more arrests and therefore criminal cases received into the Crown Court<sup>10</sup>.

As a result of these factors, the number of cases in the 'backlog' has continued to steadily increase over time, despite all the work done to improve the number of cases leaving the system. This is what has left us with nearly 74,000 cases still open and with that figure continuing to increase. This is a conservative estimate, and does not reflect the number of people involved, or the complexity of cases, owing to the fact that the Ministry of Justice collects data in the form of cases, rather than number of defendants, and the backlog is not modelled according to case complexity. Models that do account for complexity have been developed, such as that of the Institute for Government<sup>11</sup>.

It is for this reason that the government appointed Rt. Hon. Sir Brian Leveson KC to carry out an independent review into the criminal courts, which we welcome.

## **Bar Council Recommendations to the Leveson Review**

We believe that any attempts to tackle the Crown Court backlog must consider these points:

### *On intermediate Courts*

- An 'intermediary court' must be opposed. The Bar Council opposes the introduction of an intermediary court both on principle (the right to trial by jury), and in practical terms. We instead suggest that the government adopts the following recommendations:

### *On diversion*

- A new model for diversion for criminal trials, building on the models already found in Deferred Prosecution Agreements and referral orders. We believe that the experience of victims is also likely to be improved by such a change, which would improve the current situation wherein a victim may wait four years to give evidence in a criminal trial at the end

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<sup>6</sup> Ministry of Justice, '[Criminal court statistics quarterly: July to September 2024](#)'. Table C1

<sup>7</sup> Bar Council, '[Cutting court sitting days causing real concern](#)', 7 September 2024

<sup>8</sup> Bar Council '[Sitting days increase positive step in long list of measures needed to restore criminal justice](#)', 5<sup>th</sup> March 2025

<sup>9</sup> Ministry of Justice, '[Criminal court statistics quarterly: July to September 2024](#)'.

<sup>10</sup> Bar Council, 'Response to the Independent Review of the Criminal Courts'

<sup>11</sup> Institute for Government, '[Performance Tracker 2023: Criminal courts](#)', 30 October 2023

of which a defendant, if convicted, receives a community order or suspended sentence whose terms could be mirrored in a diversion order.

*On preventative measures:*

- The government should allow greater use of cautions and conditional cautions for low-level offending by those of good (or relatively good) character in circumstances where offences are not admitted in interview.
- For cases of insanity where all medical practitioners agree that a defendant is insane, a judge – upon hearing oral evidence of insanity from two registered medical practitioners – should be able to enter such a verdict and recommend the appropriate disposal.

*For efficiency of the Crown Courts and justice system*

- The court estate must be utilised to full capacity.
- The cap on sitting days for the Crown Court must be removed, and sufficient sitting days must be provided for in all jurisdictions.
- All available judges, including judges who have retired but are below the age of 75, should be allowed to sit as many days as they are available.
- Consideration should be given as to whether the prosecution of an either-way offence is necessary, where a summary-only offence (a criminal offence that is only triable (summarily) in the magistrates' court) is likely to provide sufficient sentencing powers.
- As a short-term measure, credit up to one third could be offered to any defendant who pleads guilty, where their case has not reached trial.
- Defendants awaiting trial should be remanded to the most conveniently located prison to the court at which they face trial.
- The mandatory minimum term for third-strike offences must be removed.
- Further opportunities should be explored for more efficient and creative listing schemes such as the 'Trial Blitz' in Greater Manchester and whether and how they could be rolled out further.

*For the Criminal Bar*

- An immediate uplift of 15% to criminal prosecution and defence fees to provide enough publicly funded barristers to meet the demand.
- Providing of ongoing inflation-related fee increases through the establishment of an independent fee review body to properly reward and sustain a publicly funded Bar.

## **Conclusion**

The Bar Council welcomes changes such as the record increase in Crown Court sitting days, acknowledging that this is a positive step in the right direction to restoring the criminal justice system. Proper resourcing for the criminal justice system is urgently required in order for it to function, and to restore trust and confidence. Rather than introducing new courts, investment for the record new sitting days must be provided alongside other measures to restore confidence in the system.

## **The Bar Council**